

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Misc. No.5774-M of 2004

Date of Decision : March 05, 2007.

Shiv Kumar Sharma Petitioner

Vs.

Yash Pal Sharma Respondent

Coram : Hon'ble Mr.Justice Mahesh Grover

* * *

Present : Mr.Ankur Mittal, Advocate
for the petitioner.

Mr.Anil Chawla, Advocate
for the respondent.

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MAHESH GROVER, J. (Oral) :

This is a petition under Section 482 of the Cr.P.C. praying for quashing of the complaint dated 10.11.1999 (Annexure P-1) filed under Section 138 of the Negotiable Instruments Act and the summoning order dated 17.2.2001.

It was alleged by the complainant that three cheques were issued i.e. two cheques for an amount of Rs.14,500/- each and one another cheque for Rs.2,600/- was issued separately. A complaint was filed against M/s Chemicals Sales Agency by impleading the following accused :-

“M/s Chemicals Sales Agency (A Division of Flourish Investment Limited), Village Bhagwanpur, Dera Bassi, Barwala Road, Tehsil Rajpura, District Patiala, through its authorised signatory Shiv Kumar Sharma.”

Thereafter, pursuant to the preliminary evidence adduced by the

complainant, summoning orders were issued by the Court of Judicial Magistrate Ist Class, on 17.2.2001. Process was issued. Subsequent to the issuance of process, it transpired that the complainant has not mentioned the name of the Director/Chairman/Managing Director/Principal Officer or any other person who was authorised and responsible for the state of affairs of the company and responsible for the issuance of cheques. Some representative of the Company appeared and brought the glaring defect in the complaint into the notice of the court upon which the matter was adjourned. Faced with this prospect, the complainant moved an application for amendment of the complaint, which was allowed by the trial court and in the complaint, following amendment was carried out in the 'Memo of Parties' :-

“M/s Chemicals Sales Agency (A Division of Flourish Investment Limited), Village Bhagwanpur, Dera Bassi, Barwala Road, Tehsil Rajpura, District Patiala, through Sh. Shiv Kumar Sharma which is Authorised Signatory.”

The amended complaint was filed. Then in this amended complaint, the complainant failed to mention as to how the petitioner was responsible for the state of affairs of the company.

In any eventuality the amendment of the application was allowed by the Judicial Magistrate Ist Class on 29.11.2002 and the petitioner was summoned to stand trial for the said offence.

It was contended by the learned counsel for the petitioner that there was inherent defect in the complaint as even after the amendment, the complainant failed to satisfy as to how the petitioner was responsible for the state of affairs and the conduct of the business of the company.

That apart, even if these averments are not gone into, the petitioner has since deposited the amount of Rs.31,600/- i.e. the amount of which the cheques were due and having satisfied the claim of the

complainant, the continuance of the proceedings, pursuant to the complaint, could at best be termed as an abuse of process of law.

On the other hand, learned counsel for the complainant contended that he was an employee of the company named M/s Chemicals Sales Agency which owed a substantial amount which has not been satisfied.

I have heard learned counsel for the parties.

Section 141 of the Negotiable Instruments Act clearly lays down that where the offence is alleged to have been committed by the company, then any person, who at the time of commission of offence was incharge and was responsible in the company for the conduct of its business as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Section 141 of the Negotiable Instruments Act reads as under :-

“141. Offences by companies – (1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this subsection shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained

in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purposes of this section -

- (a) “company” means any body corporate and includes a firm or other association of individuals; and*
- (b) “director”, in relation to a firm, means a partner in the firm.”*

It is clear from the above that it was incumbent upon the complainant to satisfy as to who was the incharge and was responsible for the company for the business of the company at the time of issuance of cheques.

However a perusal of the complaint shows that the same was not done. Hence clearly the complaint suffered from an inherent defect and was in violation of the provisions of law extracted above. In any eventuality, apart from the aforesaid controversy, the complaint and consequent proceedings deserved to be quashed as the petitioner has satisfied the complainant by depositing an amount of Rs.31,600/- which was the amount of the cheques issued.

During the course of proceedings before this Court, a number of opportunities were granted to the parties as they wished to settle the controversy. The petitioner was ready and willing to offer a sum of

Rs.20,000/- over and above the amount of Rs.31,600/- which has already been deposited before the trial court. However, the same was not acceptable to the respondent.

Having regard to the fact that the amount has been deposited before the trial court, no fruitful purpose would be served by persisting with the complaint and the consequent proceedings.

Resultantly, the complaint and the consequent proceedings are directed to be quashed.

The petition is allowed.

March 05, 2007

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**(MAHESH GROVER)
JUDGE**